

**TERRY PEACH 4/10/2009**

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

W. A. DREW EDMONDSON, in )  
his capacity as ATTORNEY )  
GENERAL OF THE STATE OF )  
OKLAHOMA and OKLAHOMA )  
SECRETARY OF THE ENVIRONMENT )  
C. MILES TOLBERT in his )  
capacity as the TRUSTEE FOR )  
NATURAL RESOURCES FOR THE )  
STATE OF OKLAHOMA, )

Plaintiff, )

vs. ) No. 05-CV-00329-GKF-PJC

TYSON FOODS, INC, et al., )  
Defendants. )

VIDEOTAPED DEPOSITION OF TERRY PEACH,  
before the undersigned Certified Shorthand Reporter,  
taken on behalf of the Defendants, at the Attorney  
General, 313 Northeast 21st Street, Oklahoma City,  
Oklahoma, commencing at 9:06 a.m., on April 10, 2009,  
pursuant to the stipulations of the parties.

NICHOLE M. MYERS, RPR, CSR #1704

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15  
16 S T I P U L A T I O N S

17 It is hereby stipulated and agreed by and among  
18 the parties hereto that the deposition is being taken  
19 pursuant to agreement of the parties.

20 It is further stipulated by and among the parties  
21 hereto that all objections, except as to the form of  
22 the question, are to be reserved until the time of  
23 trial.  
24  
25

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1           **Q.**     All right. Now, if you would, turn over  
2     to the -- to the very next page. And in the second  
3     column towards the top there's a heading that says  
4     "organic nutrient application rates." Do you see  
5     that?

6           **A.**     Yes, sir.

7           **Q.**     And do you know if chicken litter is  
8     considered an organic fertilizer?

9           MR. HAMMONS: Object to the form.

10          **A.**     Yes, I believe that it is.

11          **Q.**     (By Mr. Sanders) All right. Then below  
12     that you'll see two headings for nitrogen application  
13     and phosphorus application. Do you see that?

14          **A.**     Yes, sir.

15          **Q.**     And the first one for nitrogen application  
16     says the amount of nitrogen applied for manure will  
17     not exceed the animal -- the annual crop requirement  
18     for nitrogen. Do you see that?

19          **A.**     Yes, sir.

20          **Q.**     All right. And down below that's for the  
21     phosphorus application it says that the maximum  
22     planned rates of phosphorus application shall be  
23     determined using the Oklahoma phosphorus worksheet.  
24     Do you see that?

25          **A.**     Yes, sir.

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1 in that; is that correct?

2 A. Yes.

3 Q. Let me ask you about the Oklahoma  
4 Conservation Commission. Are you -- are you aware  
5 that the state of Oklahoma pays people through the  
6 Oklahoma Conservation Commission to teach people how  
7 to use litter, how to apply litter and use litter in  
8 the IRW?

9 A. Yes, sir.

10 MR. HAMMONS: Object to the form.

11 Q. (By Mr. Sanders) Is it odd to you that  
12 the state of Oklahoma on the one hand pays employees  
13 to teach people how to use litter in the IRW and on  
14 the other hand the state of Oklahoma is suing to  
15 prevent the use of litter in the IRW?

16 MR. HAMMONS: Object to the form.

17 Q. (By Mr. Sanders) Does that seem odd to  
18 you?

19 A. Yes, sir.

20 Q. You know also that there are point sources  
21 of nutrients and bacteria for that matter in the IRW;  
22 is that correct?

23 A. Restate the question.

24 Q. Do you understand that there are point  
25 sources that -- like municipal wastewater treatment

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1           **Q.**     Okay. Has there been any finding of any  
2     pollution against the poultry industry under that  
3     particular section?

4                   MR. HAMMONS: Object to the form.

5           **A.**     The industry?

6           **Q.**     (By Mr. Hixon) The industry.

7           **A.**     No.

8           **Q.**     Would that section give you jurisdiction  
9     to make that determination against the industry?

10                  MR. HAMMONS: Object to the form.

11           **A.**     No, our jurisdiction would be over the  
12     growers.

13           **Q.**     (By Mr. Hixon) So, for example, my  
14     client, Peterson Farms, who no longer has any kind of  
15     contract poultry growing operations in the Illinois  
16     River watershed, you would have no jurisdiction over  
17     Peterson Farms under that particular --

18           **A.**     Where they do not own production  
19     facilities, no.

20           **Q.**     And if Peterson Farms did have a contract  
21     grower in the Illinois River watershed and there was  
22     a finding of a violation of that provision who -- who  
23     would ODAFF take action against?

24           **A.**     We would regulate the grower.

25           **Q.**     The grower. Okay. Has the state of

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1 (Defendant's Exhibit No. 7 was identified.)

2 Q. (By Mr. Hixon) I'm going to hand you  
3 what's been marked as Exhibit 7 to your deposition.  
4 I represent that this is a page out of the first  
5 amended complaint filed by the state of Oklahoma  
6 against the Defendants in this case. Have you  
7 reviewed the first amended complaint?

8 A. No, sir.

9 Q. Okay. If you would, please look at  
10 paragraph 131.

11 A. Okay.

12 Q. I'll read that into the record for you.  
13 It says, "Additionally the poultry integrator  
14 defendants are subject to the jurisdiction of the  
15 Oklahoma Department of Agriculture, Food and Forestry  
16 pursuant to Oklahoma Environmental Quality Act and by  
17 and through their wrongful poultry waste  
18 disposable -- pardon me -- poultry waste disposal  
19 practices have caused pollution of the land and  
20 waters within the IRW in Oklahoma. Each instance of  
21 this conduct constitutes a violation of two Oklahoma  
22 Stats Section 2-18-1." Section 2-18.1 is this  
23 Exhibit 6. Would you agree with that?

24 A. Yes, I would.

25 Q. And would you agree with the allegation in

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1 this paragraph of the first amended complaint that  
2 ODAFF has jurisdiction over the poultry integrator  
3 Defendants?

4 MR. HAMMONS: Object to the form.

5 A. The Defendants being whom?

6 Q. (By Mr. Hixon) The Defendants were  
7 parties that Mr. Sanders has read to you earlier. I  
8 may not get an exhaustive list, but they're Tyson  
9 Defendants, the Cargill Defendants, George's  
10 Defendants, Simmons Foods, Peterson Foods -- pardon  
11 me, Peterson Farms, Willow Brook.

12 A. Yes.

13 Q. Okay.

14 A. Yes, I would agree with that.

15 Q. Okay. That ODAFF --

16 A. The Department of Agriculture has  
17 jurisdiction.

18 Q. Has jurisdiction over those poultry  
19 integrators?

20 A. No, the growers.

21 MR. HAMMONS: Object to the form.

22 A. The growers.

23 Q. (By Mr. Hixon) Okay. Has jurisdiction  
24 over the growers?

25 A. The farms. The actual farms.



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1           Q.     You understand that this lawsuit was not  
2 brought against the individual poultry growers?

3           A.     Yes, sir.

4           Q.     Does ODAFF have jurisdiction over the  
5 Defendants, those poultry integrators?

6                   MR. HAMMONS: Object to the form.

7           A.     It is my understanding, no, we have  
8 jurisdiction over the growers unless the Defendants  
9 have farms of their own.

10          Q.     (By Mr. Hixon) So ODAFF may have  
11 jurisdiction over an integrator if the integrator has  
12 a -- is that a company-owned farm?

13          A.     Yes, sir.

14          Q.     But that would -- would there be any other  
15 exceptions to ODAFF's jurisdiction?

16                   MR. HAMMONS: Object to the form.

17          A.     There may be other areas, but not to my  
18 knowledge.

19          Q.     (By Mr. Hixon) Okay. The question that I  
20 asked earlier about the state of Oklahoma requesting  
21 you to undertake an investigation pursuant to  
22 subparagraph B of Exhibit 6, this allegation in  
23 paragraph 131 says that these acts by the poultry  
24 integrators are in violation of that Section 2-18.1.  
25 Has the state of Oklahoma asked the Department of

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1 your farming practices and what crops you grow.

2 Q. Well, for example, you have wheat out  
3 there. And after you cut your wheat crop what do you  
4 do with it?

5 A. Work the ground.

6 Q. And that means you work in the organic  
7 matter that's left over after the wheat's harvested?

8 A. Yes, sir.

9 Q. So that's giving back to the soil, isn't  
10 it?

11 A. Yes, sir.

12 Q. And the same with your pasture, do you  
13 burn your pasture every year?

14 A. No.

15 Q. Do you ever burn your pasture?

16 A. No.

17 Q. So the grass that doesn't come back the  
18 next year and that which gets on the ground it  
19 decomposes and that's giving back to the soil too,  
20 isn't it?

21 A. Yes, sir.

22 Q. When you apply poultry litter you're not  
23 just applying nitrogen and phosphorus and other major  
24 nutrients, are you, sir?

25 A. No.

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1           **Q.**     What else are you applying to your soil?

2           **A.**     You're applying nutrients, humus and also  
3 soil bacteria.

4           **Q.**     Does chemical fertilizer do that for the  
5 soil?

6           **A.**     No, sir.

7           **Q.**     Are those things that you're adding back  
8 to the soil healthy for the soil?

9                   MR. HAMMONS: Object to the form.

10          **A.**     They're if you're careful with the amount  
11 of ingredients that you apply back and you apply  
12 those ingredients back based on soil analysis.

13          **Q.**     (By Mr. Tucker) My grandfather was a  
14 gentleman farmer, or so he saw himself, out by Lake  
15 Overholser here in Oklahoma City. Faircroft Farm was  
16 his place. He grew alfalfa. And Oklahoma State came  
17 down and talked to him about 1950 and said,  
18 "Mr. Johnston, if you'll add some nitrogen at this  
19 rate to your fertilizer -- to your alfalfa, you'll  
20 get a lot better crop. You'll get probably double  
21 the crop you've got now. You can probably get two  
22 cuttings instead of one." And so my grandfather  
23 being no fool figured that if that much was good, if  
24 he put on twice as much, he'd get four times as much  
25 alfalfa. That didn't work for him. He lost all his

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1 alfalfa.

2 Is that kind of what you're talking about?

3 A. Yes, sir.

4 Q. Is that one of the things that a farmer  
5 can benefit from by following a nutrient management  
6 plan prepared under the auspices of ODAFF?

7 A. Yes, sir.

8 MR. HAMMONS: Object to the form.

9 A. Yes, sir.

10 Q. (By Mr. Tucker) One of the things that  
11 ODAFF does when they instruct farmers on the proper  
12 use of organic fertilizers or litter and how to apply  
13 it is they put on a slide show for them or a Power  
14 Point. Have you seen that Power Point?

15 A. No, sir, I haven't.

16 Q. Well, let me tell you one of the -- one of  
17 the training videos -- you know there is a training  
18 video though?

19 A. Yes, sir.

20 Q. One of the presentations in the training  
21 video, and I'll quote from it, "your AWMP" -- and you  
22 know what an AWMP is?

23 A. Yes.

24 Q. What is an AWMP by the way?

25 A. It's a waste management plan.

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1 Q. And what kind of soil testing do they do?  
2 I mean what are they testing for?

3 A. M, P and K and trace elements.

4 Q. And is that solely for your-all's  
5 management purposes or does that get reported to some  
6 agency at the state?

7 A. It's for our management purposes.

8 Q. Okay. So it's not being reported out  
9 really?

10 A. No.

11 Q. You had said earlier, I mean a lot  
12 earlier, that you wouldn't mind using poultry litter  
13 if it was, you know, available and at a decent price?

14 A. And cost effective.

15 Q. Yeah, because you guys are out west.

16 A. Yes.

17 Q. Have you seen any reports or studies on  
18 whether poultry litter is considered to be effective  
19 for wheat growing?

20 A. Yes.

21 Q. And what's the general tenor of what  
22 you've seen?

23 A. It is effective.

24 Q. If litter was available, would you be  
25 using it for the wheat or for the pastures or for

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1 both?

2 A. For both.

3 Q. Have you seen any reports that indicate  
4 whether or not poultry litter is good for pasture?

5 A. Yes, or I wouldn't use it.

6 Q. Okay. So --

7 A. I just answered that.

8 Q. Okay. All right. So -- so good?

9 A. Yes.

10 Q. All right. Okay. Before you became the  
11 head of ODAFF --

12 A. Yes.

13 Q. -- and the Secretary of Agriculture did  
14 you know folks who raised cattle over in the IRW?  
15 Professionally, socially, whatever.

16 A. I specifically wouldn't know what  
17 watershed they lived in, no.

18 Q. Okay. Have you gotten any general  
19 impression whether or not the use of poultry litter  
20 has improved pasture range over in that part of the  
21 state?

22 MR. HAMMONS: Object to the form.

23 A. Yes, it has very much improved range  
24 conditions in that watershed.

25 Q. (By Mr. Freeman) Is there any special